IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11015 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUBHAI NAGBHAI MAITRA

Versus

COMPETENT AUTHORITY UNDER THE GUJ. PROVISION FOR

Appearance:

1. Special Civil Application No. 11015 of 2001

MR TUSHAR MEHTA for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

NANAVATY ADVOCATES for Respondent No. 2

MR GM JOSHI for Respondent No. 3

MR YN RAVANI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 05/09/2003

CAV JUDGEMENT

The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order dated 8th November 2001 passed by the competent authority under the Gujarat Provision for

Disqualification of Members of Local Authorities for Defection Act, 1986 (hereinafter referred to as the "Act"), the respondent No.1 herein, disqualifying the petitioner from continuing as a Member of Savarkundla Taluka Panchayat under the exercise of powers conferred upon him in the said Act.

2. It is the case of the petitioner that the election of the Executive Committee of Savarkundla Taluka Panchayat was due in January 2001 as the election of the said Committee is required to be held at an interval of every two years. The Savarkundla Taluka Panchayat comprised of 21 members out of which 6 members belong to Congress (I) Party, 9 members belong to BJP and 6 members belong to Samata Party. The election of the Executive Committee of the Taluka Panchayat which comprised of 11 members was held on 15th January 2001 and in view of the political configuration, no single party in the Taluka Panchayat was in a position to elect their members as Members of the Executive Committee and therefore it was not possible to hold the election for the purpose of electing the said Committee on the basis of parties. It is only because of this fact, the Congress (I) did not issue any direction requiring the members elected on its ticket either to vote in a particular manner or not to vote. The election of the said Committee took place on 15th January 2001 and eleven persons including the present petitioner came to be elected as Members of the Executive Committee of the Savarkundla Taluka Panchayat. After the petitioner's election as Member of the said Committee, the election for the post of Chairman of the said Committee was held on 3rd February 2001 and the petitioner was elected as Chairman of the Executive Committee in the said election.

3. It is the further case of the petitioner that the respondent No.2, namely Shri Babubhai Arjanbhai Patidar who contested the election for being elected as Member of the Executive Committee along with his panel which comprised of members belonging to BJP and Samata Party, came to be defeated and neither himself nor the members of his panel could get themselves elected as the members of the Executive Committee. Because of this fact, the said Shri Babubhai has filed an application before the competent authority under the Act fabricating a document purported to be a letter dated 15.1.2001 issued by him in his capacity as a person authorised by the party to issue direction to the members of the Taluka Panchayat to cast their vote in a particular manner. The said application is filed by the said Shri Babubhai on 15.2.2001 and it was accompanied by a declaration in Form No.2 appended to the rules. It was alleged by the petitioner that the

respondent No.2 was conscious of the fact that the document relied upon and a xerox copy of which was produced by him was a fabricated document and therefore deliberately did not file a verification mandatorily stipulated under the rules, according to which, the verification has to be made as per the provisions prescribed under the Code of Civil Procedure.

4. It is further the case of the petitioner that the petitioner raised a preliminary objection on 26th June 2001 with regard to the maintainability of the application dated 15.2.2001 filed by the respondent No.2 before the competent authority under the Act and prayed for dismissal of the said application at the threshold. The petitioner has also insisted in the said application raising preliminary objection that his signature purported to have been taken by the respondent No.2 in the so-called letter dated 15.1.2001 is a forged signature and therefore demanded that the original should be produced before the competent authority. The respondent No.2, after some adjournments made an attempt to show the original of the said letter dated 15.1.2001, but it was apparent that the petitioner's signature found thereon was a forged signature and not the signature of the petitioner. The petitioner immediately approached the police officer of Savarkundla Taluka police station and the petitioner's complaint was registered in the Police Station Diary, vide Entry No. 19 dated 25th April 2001. The petitioner also filed a criminal complaint in the Court of learned Judicial Magistrate (FC), South Gujarat, on 3rd September 2001 in which, the learned JMFC has passed an order directing investigation under Sec. 156(3) of the Criminal Procedure Code.

5. Despite the aforesaid facts, the competent authority has passed the impugned order on 8.11.2001 disqualifying the petitioner and by virtue of this order, the petitioner who was elected as Chairman of the Executive Committee by the mandate of the Executive Committee and his election as a member of Savarkundla Taluka Panchayat which post was only due to the mandate given by the electorate was sought to be placed in jeopardy. The petitioner, therefore, challenged the said order in the present petition on the ground that the said order is unjust, illegal, arbitrary, irrational and suffers from vice of non-consideration of relevant statutory provisions and misinterpretation of the scheme of the Act and the rules framed thereunder.

6. Mr. MC Bhatt along with Mr. Tushar Mehta, learned advocates appearing for the petitioner submitted

that the Act provides for disqualification of members of local authorities if there is any defection on their part. The said Act empowers the competent authority to set at naught the electoral mandate of the residents of Taluka Panchayat. When a statutory provision enables or empowers any particular officer to put stigma of a person elected and having the majority will of the people reflected in his favour, such statutory provision is undisputedly required to be construed very strictly and the procedure established under the said Act and the rules framed thereunder are required to be adhered to in letter and spirit. It is submitted that the rules made under the Act seek to achieve an object of avoiding false, frivolous and vexatious applications under the said Act by disgruntled elements who try to misuse the statutory provisions to take political vengeance. With a view to ensure that the said purpose is achieved and an applicant who invokes the provisions of the Act and prays for disqualification of elected member files an application honestly and becomes responsible for any incorrect facts stated by him, it provides for a mandatory form in which the applicant is required to make application under the Act. It is further submitted that the Act therefore provides for the mandatory ingredients which must be contained in every petition filed under the Act. The relevant provision for this purpose is contained in Rule 6(5) of the Rules which says that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings. Mr. Bhatt, therefore, submits that this Rule is a mandatory provision and the legislative intent to make the said provision mandatory is reflected from the fact that the Legislatures have provided for the consequences if Rule 6(5) is not complied with. Rule 7(2) states that if the petition does not comply with the requirements of Rule 6, the Chief Secretary, or the case may be, the Designated Officer shall dismiss the petition and intimate the petitioner accordingly. Mr. Bhatt, therefore, submits that since the respondent No.2 had fabricated the letter dated 15.1.2001, he deliberately did not file his application along with the verification as required by the Code of Civil Procedure. The competent authority, however did not at all appreciate and consider the said contention and proceeded to pass the impugned order without seriously dealing with the said contention which goes to the root of the matter and which touches the very maintainability of the application filed by the respondent No.2. The competent authority is under an obligation imposed upon him in the Statute to dismiss the application without going into the merits if the

application is not found to have complied with the requirements of the rules. The competent authority has therefore committed a serious error in law as well as on facts in entertaining the application filed by the respondent No.2, though indisputably the mandatory requirement contained in Rule 6(5) of the Rules was not complied with.

7. Mr. Bhatt has further submitted that the petitioner has specifically contended that the party to which the petitioner belongs did not issue any direction requiring the members elected on the ticket of the said party to exercise their right to vote in a particular manner. The petitioner had raised a specific contention that the letter dated 15.1.2001 purported to be a letter written by respondent No.2 as Chief Whip of Congress Party is never issued and since respondent No.2 is defeated in the election, he has fabricated the said letter with a view to ensure that the petitioner gets disqualified. The petitioner has seriously disputed the genuineness of the alleged signature purported to be a signature of the petitioner and immediately moved the machinery of criminal law on being served with the notice issued by respondent No.1. Inspite of this categorical contention about the fabrication of the said letter by which the petitioner was alleged to have been served with the direction, the respondent No.1 did not take the said pleadings into consideration nor did he appreciate the issue in its right perspective and ignoring the seriousness of the said vital question, the respondent No.1 proceeded to pass the impugned order merely on surmises and conjectures which demonstrates that the impugned order is vitiated by malice in law as well as on facts.

8. Mr. Bhatt has further submitted that whenever a political party issues any such direction which is in the nature of "whip" such whip is required to be served not only upon the members of that party, but it is also required to be served upon the Taluka Development Officer who is an ex officio Secretary of a Taluka Panchayat. The Taluka Development Officer has not received any such whip which is supported by the certificate issued by the Taluka Development Officer informing the petitioner that he did not receive any such direction. Mr. Bhatt has further submitted that when the respondent No.2 was defeated in getting himself and his panel supported by BJP, elected in the Executive Committee he made a complaint to respondent No.4, who is the President of Amreli District Congress Committee. Upon a misrepresentation by him, the Congress Party has passed

an order of suspension against the petitioner. However, upon true facts being known, the suspension order was immediately revoked on 28.1.2001. He has further submitted that since there was no whip issued by the party as contemplated under Section 3 of the Act, there was no question of the petitioner being under any obligation to vote in a particular fashion in view of the fact that the respondent No.2 who is elected on a ticket of Congress (I) formed the panel along with the members belonged to BJP, the petitioner was fully justified in voting in the larger interest of his own party and therefore, the petitioner's act of voting in the manner in which he did on 15.1.2001 could not have been legally or morally objected to. He has further submitted that there was no question of the petitioner disobeying such whip and therefore the question of condoning the petitioner's voting as contemplated under Section 3 of the Act did not arise. However, as the respondent No.2 was claiming to have issued a whip himself, the party to which the petitioner belongs already condoned the petitioner's voting in a particular manner on 15.1.2001 and the said fact is reflected in the letter dated 26.7.2001 addressed to the petitioner by the respondent No.4. This letter is also ignored by the competent authority while passing the impugned order disqualifying the petitioner.

9. In support of the legal submissions made by Mr. Bhatt, reliance is placed on decision of the Hon'ble Supreme Court in the case of Sharif-ud-Din vs. Abdul Gani Lone - AIR 1980 SC 303, wherein it is held that :

> "The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow. Test to determine whether a provision is directory or mandatory pointed out."

It is further held in the said decision as under :

"The attestation by the advocate for the petitioner cannot be treated as the equivalent of attestation by the petitioner under his own signature. The object of requiring the copy of an election petition to be attested by the petitioner under his own signature to be a true copy of the petition is that the petitioner should take full responsibility for its contents and that the respondents should have in their possession a copy of the petition duly attested under the signature of the petitioner to be the true copy of the petition at the earliest possible opportunity to prevent any unauthorised alteration or tampering of the contents of the original petition after it is filed into court."

Mr. Bhatt has further relied on the decision of the Hon'ble Supreme Court in the case of - Saiya Narain vs. Dhuja Ram and Others - AIR 1974 SC 1185, wherein the Apex Court has held that Section 81(3) is mandatory and noncompliance with it results in dismissal of the election petition. In this context , it is observed as under;

"The right to challenge an election is a special right conferred under a self-contained special law and the court will have to seek answer to the question raised within the four corners of the Act and the powers of the court are circumscribed by its provisions. An election petition cannot be equated with a plaint in a civil suit."

It is further observed;

"In the absence of any provision under the Act or the rules made thereunder, the High Court Rules cannot confer upon the Registrar or the Deputy Registrar any power to permit correction or removal of defects in an election petition presented in the High Court beyond the period of limitation provided for under the Act."

Mr. Bhatt has further relied on the decision of the

Hon'ble Supreme Court in the case of Harcharan Singh Josh vs. Hari Kishan - AIR 1996 SC 3350, wherein after referring to the Judgment of the Hon'ble Supreme Court in the case of Dr. (Smt). Shipra vs. Shantilal Khoiwal (1996) 4 JT (SC) 67, it is observed that the affirmation before the prescribed authority in the affidavit and the supply of its true copy is mandatory so that the returned candidate would not be misled in his understanding that imputation of the corrupt practices were solemnly affirmed and duly verified before the prescribed authority. For that purpose, Form 25 prescribed by Section 83 requires verification before prescribed authority. The concept of substantial compliance has no application in such a case. The Hon'ble Supreme Court has, therefore, taken the view that the defect is not a curable defect and the dismissal of the election petition on this ground is therefore sustainable in law. Mr. Bhatt has lastly relied on the decision of the Hon'ble Supreme court in the case of Tarlochan Dev Sharma vs. State of Punjab and Others - AIR 2001 SC 2524, wherein it is held as under;

> "In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within S. 22 of the Act must be clearly made out."

10. On the basis of the facts of the case as well as the authorities relied upon by him, Mr. Bhatt has strongly urged that the petition deserves to be allowed and the impugned order passed by the competent authority

requires to be quashed and set aside.

11. Mr. ND Nanavati, the learned Senior Counsel appearing for respondent No.2 submitted that though the present petition is filed by the petitioner under Art. 226 of the Constitution of India, really speaking it is a petition filed under Art. 227 of the Constitution of India as the competent authority established under the Act has passed the impugned order considering the facts and circumstances of the case and the factual finding arrived at by the competent authority cannot be challenged in the present petition. Such factual finding cannot therefore be made vulnerable by filing the petition before this Court invoking the extraordinary writ jurisdiction of this Court. He has further submitted that Section 6 of the Act makes it clear that if any question arises as to whether, a Councillor of a Municipal Corporation or a Member of the Panchayat, or a Councillor of a Municipality has become subject to disqualifications under this Act, the questions shall be referred to the Chief Secretary to the State Government or to such Officer not below the rank of a Secretary of any department of the State Government as may be designated by the State Government in this behalf and his decision shall be final. In the present case, an application was made by the respondent No.2 before the competent authority raising the grievance against the petitioner and the same was decided by him after giving adequate opportunity to the petitioner and his decision is therefore final. Mr. Nanavati, however, fairly submitted that in view of Section 7 there is a bar of jurisdiction of Civil Court but in any case there is no such bar so far as invocation of writ jurisdiction of this Court is concerned. He has, however, emphasized that the scope is very limited and only the legal issues arising from the order of the authorities below can be adjudicated by this Court while entertaining any such petition filed against the order of the competent authority passed under the Act. Mr. Nanavati has further submitted that all the authorities relied upon by the petitioner's ld. Advocate are in respect of the election dispute, however, the case of the present petitioner arose under the Ante Defection law and therefore the criteria and parameters laid down under the law discussing election disputes are quite different than that of Ante Defection law.

12. In support of his submissions, Mr. Nanavati relied on the decision of the Hon'ble Supreme Court in the case of F.A. Sapa and Others vs. Singora and Others - (1991) 3 SCC 375, wherein it is held as under;

"A charge of corrupt practice has a two dimensional effect; its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure the purity of the election process. Therefore, such an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial. While defective verification or a defective affidavit may not be fatal, the High Court should ensure its compliance before the parties go to trial so that the party required to meet the charge is not taken by surprise at the actual trial. Delay in complying with the requirements of Section 83 read with the provisions of the Code or the omission to disclose the grounds or sources of information, though not fatal, would weaken the probative value of the evidence ultimately led at the actual trial. Therefore, an election petitioner can afford to overlook the requirements of Section 83 on pain of weakening the evidence that he may ultimately tender at the actual trial of the election petition. That is because the charge of corrupt practice has to be proved beyond reasonable doubt and not merely by preponderance of probabilities. Allegation of corrupt practice being quasi-criminal in nature, the failure to supply full particulars at the earliest point of time and to disclose the source of information promptly may have an adverse bearing on the probative value to be attached to the evidence tendered in proof thereof at the trial. Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure forms an integral part of the election petition itself, strict compliance would be insisted upon."

Mr. Nanavati has further relied on the decision of

Hon'ble Supreme Court in the case of Ravi S. Naik vs. Union of India & Others - 1994 (Suppl.) (2) SCC 641, wherein it is held as under;

"The Disqualification Rules have been framed by the Speaker in exercise of power conferred by Paragraph 8 of the Tenth Schedule to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6. Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 is confined to breaches of the constitutional mandates, malafides, noncompliance with rules of natural justice and perversity. Violation of the Disqualification Rules cannot amount to violation of constitutional mandates. The Rules have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule."

Mr. Nanavati has further relied on the decision of the Hon'ble Supreme Court in the case of T. Phungzathang v. Hangkhanlian and Others - (2001) 8 SCC 358. wherein while delivering the concurrent Judgment, Justice Lahoti has summed up the law laid down by the Constitutional Bench of the Supreme Court in T.M. Jacob's case, reported in 1999 (4) SCC 274 as under;

(i) The object of serving a "true copy" of an election petition and the affidavit filed in support of the allegations of corrupt practice of the respondent in the election petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and

prepare his defence. The requirement is of substance and not of form.

(ii) The test to determine whether a copy was a true one or not was to find out whether any variation from the original was calculated to mislead a reasonable person.

(iii) The word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it.

(iv) Substantial compliance with Section 81(3) was sufficient and the petition could not be dismissed, in limine, under Section 86(1) where there had been substantial compliance with the requirements of Section 81(3) of the Act.

(v) There is a distinction between noncompliance with the requirement of Section 81(3) and Section 83. A substantial compliance with the requirements of Section 81(3) read with the proviso to Section 83(1) of the Act is enough. Defects in the supply of true copy under Section 81 of the Act may be considered to be fatal, where the party has been misled by the copy on account of variation of a material nature in the original and the copy supplied to the respondent. The prejudice caused to the respondent in such cases would attract the provisions of Section 81(3) read with Section 86(1) of the Act. The same consequence would not follow from noncompliance with Section 83 of the Act.

(vi) The argument that since proceedings in election petitions are purely statutory proceedings and not civil proceedings as commonly understood, there is no room for invoking and importing the doctrine of substantial compliance into Section 86(1) read with Section 81(3) of the Act, cannot be accepted and has to be repelled.

(vii) It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in Murarka Radhey Shyam AIR 1964 SC 1545 and Ch. Subbarao cases AIR 1964 SC 1027. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. This clearly emerges from the scheme of Sections 83(1) and 86(5) of the Act.

(viii) A certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under

Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in Murarka Radhey Shyam case AIR 1964 SC 1545 are sound tests and are now well settled."

13. On the basis of the aforesaid judgments of the Hon'ble Supreme Court and looking to the scope and ambit of Ante Defection Law, Mr. Nanavati has submitted that the Court should ignore the procedural defects if any and for the purpose of rendering substantial justice and with a view to achieve the legislative intent of discouraging the defection at all levels, this Court should not entertain the present petition and it should be dismissed with costs.

14. The learned AGP appearing for respondent No.1 has supported the order passed by the competent authority. Mr. GM Joshi, ld. advocate appearing for the Savarkundla Taluka Panchayat has submitted that the respondent No.3 is bound by the decision taken by this Court in the present petition filed by the petitioner. Mr. YN Ravani, ld. advocate appearing for respondent No.4 has supported the case of the petitioner and submitted that the respondent No.4 has not issued any whip to the members of the party to vote in a particular manner in the election of the Executive Committee of the Savarkundla Taluka Panchayat.

15. The controversy which arose in the present petition centres round the provisions contained in The Gujarat Provision For Disqualification of Members of Local Authorities for Defection Act, 1986 and the Rules framed thereunder, namely,The Gujarat Provisions For Disqualification of Members of Local Authorities for Defection Rules, 1987. The Act provides for disqualification of members of certain local authorities on ground of defection and for matters connected therewith. Section 3 of the Act deals with disqualifications on ground of defection. It runs as under:

Disqualification on ground of defection.___(1) Subject to the provisions of sections 4 and 5 a councillor or a member belonging to any political party shall be

disqualified for being a councillor or a member.___

(a) if he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in any meeting of a municipal corporation, panchayat or as the case may be, municipality contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf without obtaining in either case the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party person or authority within fifteen days from the date of such voting or abstention."

Sections 4 and 5 of the Act carve out two exceptions which say that disqualification on ground of defection shall not apply in case of split and merger. Section 8 of the Act empowers the State Government to make rules for carrying out the purposes of the Act. In exercise of the powers conferred by Section 8 of the Act, the State Government has made the Rules referred to above. Rule 3 (6) of the Rules talks about the procedure to be followed where a member belonging to any political party votes or abstains from voting in any meeting of any local authority contrary to any direction issued by such political party. It reads as under:

"Where a member belonging to any political party votes or abstains from voting in any meeting of a municipal corporation, panchayat or municipality contrary to any direction issued by such political party or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, the leader of the municipal party or panchayat party concerned or where such members is the leader, or as the case may be, the sole member of such municipal party, or panchayat party, such member, shall, as soon as may be after the expiry of fifteen days from the date of such voting or abstention, and in any case within thirty days from the date of such voting or abstention, inform the designated officer in Form II whether such voting or abstention has or has not been condoned by such political party, person or

authority."

Rule 6 talks about References to be made by petitions and Rule 6(5) says that "every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (3 of 1908), for the verification of pleadings. Rule 7 prescribes the procedure to determine as to whether the petition complies with the requirement of rule. Rule 7(2) says that "If the petition does not comply with the requirements of Rule 6, the Chief Secretary or, as the case may be, the designated officer shall dismiss the petition and intimate the petitioner accordingly."

16. From the foregoing discussion about statutory provisions, it becomes crystal clear that if conditions laid down in Rule 6(5) of the Rules are not satisfied, the petition is required to be dismissed as per the provisions contained in Rule 7(2) of the Rules. Whether these Rules are mandatory or directory, can be decided on the basis of fact as to whether they provide any consequence as held by the Supreme Court in the case of Sharif-Un-Din vs. Abdul Gani Lone (Supra). Here in the present case, Rule 7(2) prescribes the consequence of dismissal of petition and hence the case squarely falls within the ratio laid down by the Hon'ble Supreme Court.

17. Mr. Nanavati's argument that the judgments relied on by the petitioners are rendered in the context of election petitions filed under Representation of Peoples Act, whereas the present petition is filed under Ante-Defection Laws and hence parameters and considerations are different in both the cases. This argument is, however, not much weighed with the Court. Under Representation of Peoples Act, all disputes arising upto holding of election are entertained whereas under the Ante-Defection Law disputes arise after the election is over and the elected member commits any breach. In both the cases, it is expected from the persons either contesting elections or from the persons already elected, to observe the due compliance of the provisions contained in statutory Acts or Rules. The noncompliance of Rule 6(5) of the Rules cannot, therefore, be treated differently especially when consequence is provided in Rule 7(2) of the Rules.

18. Mr. Nanavati's further argument is that Rules being pieces of delegated legislation, strict compliance should not be insisted, but what is needed is substantial compliance. It cannot, however, be accepted. Rule 6 of the Rules is mandatory in nature and it is having

statutory force. Hence, it also requires strict compliance and any violation thereof, renders the petition or application dismissed. It cannot be saved on the ground of having substantial compliance. Even after discussing the case law on this subject at great length, the Hon'ble Supreme Court in the case of T. Phungzathang v. Hangkhanlian and Others (Supra), has observed that it is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. In the present case, neither the verification was made nor the said defect was cured despite objection having been raised. It, therefore, leads to only one conclusion that with a view to avoid any criminal action against him, the Respondent No.2 had intentionally not made any verification. The petition therefore, deserves to be dismissed on this very ground.

19. Whether this petition is under Article 226 or 227 of the Constitution of India, the Court cannot ignore the facts found on record and the conclusion drawn therefrom by the competent authority. It has come on record that the petitioner has disputed the fact regarding issuance of whip and denied his signature on the letter dated 15.1.2001. The Respondent No.3 has also denied to have received any such letter containing whip for the members of Congress (I). The Respondent No.4 has also, vide his letter dated 26.7.2001, made it clear that the party has not issued any whip and if the Respondent No.2 has issued any instruction in his individual capacity, the same was not binding on any member of the party. All these facts are to be examined in the background that no party has got any clear majority in the election and panels were formed by the concerned members absolutely in their individual capacities, irrespective of their affiliation with any particular party. Thus, issuance of whip itself is unbelievable and unacceptable, and, hence, there is no question of its violation by the petitioner. The impugned order passed by the competent authority is, therefore, not sustainable on facts also.

20. The Court is conscious about the fact that Ante-Defection Law is framed to curb corruption, malpractices and malicious or fraudulent motives in toppling the existing bodies either at the level of local authorities, State or Central level and Court should heavily bounce upon such defectors, but at the same time, the Court has to also see that such laws should not be misused for certain oblique motives or personal gains. Here, in the present case, the Respondent No.2 and his Panel were defeated and without any authority, the

alleged whip was said to have been issued and stated to have been served on the petitioners. Neither the Taluka Development Officer nor the President of the District Congress Committee had supported the Respondent No.2's version. On the contrary, suspension order passed against petitioner was also revoked. Hence, there was no merit in the order disqualifying the petitioner.

21. In the result, the petition succeeds. The impugned order dated 8.11.2001 is hereby quashed and set aside. Rule made absolute with costs. The Respondent shall pay the cost of this petition valued at Rs. 1,000/= to the petitioner.

rmr. [K.A. Puj, J.]